

NOT TO BE PUBLISHED

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

KEVIN BRUCE AUGUSTINE,

Defendant and Appellant.

C088245

(Super. Ct. No. 16FE010400)

Appointed counsel for defendant Kevin Bruce Augustine has filed an opening brief that sets forth the facts of the case and asks this court to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).) Finding no arguable issue that could result in a more favorable outcome for defendant, we remand with directions to correct the abstract of judgment and otherwise affirm the judgment.

We provide the following brief description of the facts and procedural history of the case. (See *People v. Kelly* (2006) 40 Cal.4th 106, 110, 123-124.)

A complaint deemed an information charged defendant with three counts of failing to register as a sex offender (Pen. Code, § 290.018, subd. (b))¹ and alleged two prior strikes (§§ 667, subds. (b)-(i), 1170.12).

Defendant pleaded no contest to count 1 and admitted one prior strike, in return for a maximum state prison sentence of 32 months and the right to seek *Romero*² relief before sentencing. Defendant subsequently entered a *Cruz*³ waiver and was informed that if he failed to appear for sentencing, he could be sentenced to serve up to six years in state prison.

The prosecutor stated the stipulated factual basis for defendant's plea as follows: "On or about and between February 8, 2016, and May 6, 2016, in Sacramento County, the defendant did commit a felony violation of . . . Section 290.018(b). Back in 1991 the defendant was convicted of rape in Sacramento County and as a result of that had to comply with the 290 provisions. On October 19, 2016, the defendant registered his address as 3020 Wolfe . . . Court. On a compliance check on October 26, 2016, officers found that a witness said that the defendant has never lived there and he has no belongings there. He was in violation of his 290 compliance requirements. [¶] Additionally, with respect to a prior conviction, on April 11, 1991, in Sacramento County, the defendant was convicted of force[i]ble rape in violation of . . . Section 261(2), which is a serious felony within the three strikes provisions."

On the date set for sentencing, defendant failed to appear.

¹ Undesignated statutory references are to the Penal Code.

² *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

³ *People v. Cruz* (1988) 44 Cal.3d 1247.

After defendant was arrested and brought in custody to sentencing on October 25, 2018, the trial court imposed a four-year state prison sentence, consisting of the two-year middle term on count 1, doubled for the prior strike. The trial court awarded defendant 241 days of presentence custody credit (121 actual days and 120 conduct days). The court imposed a \$300 restitution fine (§ 1202.4, subd. (b)), a matching suspended parole revocation restitution fine (§ 1202.45), a \$40 court operations assessment (§ 1465.8), and a \$30 conviction assessment (Gov. Code, § 70373).

Appointed counsel filed an opening brief that sets forth the facts of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*Wende, supra*, 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days elapsed, and we received no communication from defendant.

Our review of the record discloses the abstract of judgment erroneously shows defendant's total prison term as consisting of a purported middle term sentence of four years and does not mention defendant's admitted strike. We shall order the abstract of judgment corrected to show defendant was sentenced to serve the two-year middle term, doubled for the strike. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185.)

Having undertaken an examination of the entire record, we find no arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment is affirmed. The trial court is directed to prepare a corrected abstract of judgment reflecting defendant's sentence as specified above and to forward a certified copy of the corrected abstract to the Department of Corrections and Rehabilitation.

/s/
HOCH, J.

We concur:

/s/
MAURO, Acting P. J.

/s/
KRAUSE, J.